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06 UNITED STATES DISTRICT COURT  
07 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

08 LANCE EMIGH, ) Case No. C08-976-JLR-JPD  
09 Plaintiff, )  
10 v. )  
11 MONROE STATE PRISON, *et al.*, ) REPORT AND RECOMMENDATION  
12 Defendants. )  
13 \_\_\_\_\_ )

14 INTRODUCTION

15 Plaintiff Lance Emigh is currently confined in the Special Offender Center of the  
16 Monroe Correctional Complex (“MCC”), in Monroe, Washington. Appearing *pro se*, he  
17 recently filed an application to proceed *in forma pauperis* together with a proposed civil  
18 rights complaint, pursuant to 42 U.S.C. § 1983. (Dkt. No. 1). Plaintiff alleges in his  
19 complaint that he has been verbally threatened by guards at MCC. (Complaint at 3). Having  
20 screened plaintiff’s proposed complaint pursuant to 28 U.S.C. § 1915A, the Court  
21 recommends, for the reasons set forth below, that plaintiff’s case be dismissed without  
22 prejudice.

23 DISCUSSION

24 In order to sustain a cause of action under 42 U.S.C. §1983, plaintiff must show (i)  
25 that he suffered a violation of rights protected by the Constitution or created by federal  
26 statute, and (ii) that the violation was proximately caused by a person acting under color of

01 state law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9<sup>th</sup> Cir. 1991). To satisfy the  
02 second prong, plaintiff must allege facts showing how individually named defendants caused  
03 or personally participated in causing the harm alleged in the complaint. *See Arnold v. IBM*,  
04 637 F.2d 1350, 1355 (9<sup>th</sup> Cir. 1981). States are not persons for purposes of § 1983. *See*  
05 *Arizonans for Official English v. Arizona*, 117 S. Ct. 1055, 1069 (1997); *Hale v. Arizona*,  
06 993 F.2d 1387, 1398 (9<sup>th</sup> Cir. 1993) (en banc). Neither are entities that are arms of the state.  
07 *See Howlett v. Rose*, 496 U.S. 356, 365 (1990).

08 Here, plaintiff has named as defendants MCC, the Special Offender Center, the  
09 Washington Department of Corrections, the Superintendent of MCC, one guard whom  
10 plaintiff identifies as “B. Croft,” and two unidentified guards. (Complaint at 1). Many of  
11 these defendants are not amenable to suit under § 1983: the Department of Corrections,  
12 MCC, and the Special Offender Unit are arms of the state and are therefore shielded by the  
13 Eleventh Amendment. *See Howlett*, 496 U.S. at 365. In addition, plaintiff has not alleged  
14 that the Superintendent of MCC personally participated in causing the harm alleged in the  
15 complaint. Therefore, the present action may not proceed against these defendants.

16 In addition, plaintiff’s complaint against the remaining defendants – prison guards at  
17 MCC – fails to state a claim upon which relief may be granted. While the allegation of verbal  
18 threats is certainly regrettable if true, verbal harassment alone does not rise to the level of a  
19 constitutional violation. *See Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9<sup>th</sup> Cir. 1987);  
20 *Keenan v. Hall*, 83 F.3d 1083, 1092 (9<sup>th</sup> Cir. 1996). Further, offering plaintiff an opportunity  
21 to amend his complaint would be futile. On page two of the complaint, plaintiff concedes  
22 that he has not finished the grievance process at MCC concerning the allegations he presents  
23 here. Exhaustion of administrative remedies is a prerequisite to filing a § 1983 action. *See* 42  
24 U.S.C. § 1997e(a); *Porter v. Nussle*, 122 S. Ct. 983, 988 (2002). Therefore, even if plaintiff  
25 were to amend his complaint to somehow state a viable cause of action, defendants would  
26 likely prevail in a motion to dismiss on the ground that plaintiff failed to exhaust his

01 administrative remedies. Because it is clear that no amendment could cure this defect in the  
02 complaint, the Court need not provide plaintiff with the opportunity to amend his complaint.  
03 *See Lucas v. Department of Corrections*, 66 F.3d 245, 248 (9<sup>th</sup> Cir. 1995) (per curiam).

04 CONCLUSION

05 For the foregoing reasons, the Court recommends that the complaint and this action  
06 be DISMISSED without prejudice. Further, plaintiff's application to proceed *in forma*  
07 *pauperis* may be DENIED as moot. A proposed Order accompanies this Report and  
08 Recommendation.

09 DATED this 28th day of July, 2008.

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11 JAMES P. DONOHUE  
12 United States Magistrate Judge  
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